



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1 600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600



March 19, 1996

MEMORANDUM FOR SENIOR ASSISTANT FOR POLICY AND OSD SPEAKERS
BUREAU OPERATIONS

SUBJECT: DoD Employee Participation in Sporting Events

This is in response to your request for guidance regarding the free attendance of DoD employees in community relations events that include sporting activities. The example you provided involved the golf tournaments hosted by the Greater San Antonio Chamber of Commerce.

The specific rule in question is 5 CFR 2635.204(g), "widely attended gathering." It states:

When there has been a determination that his attendance is in the interest of the agency because it will further agency programs or operations, an employee may accept a sponsor's unsolicited gift of free attendance at all or appropriate parts of a widely attended gathering of mutual interest to a number of parties. A gathering is widely attended if, for example, it is open to members from throughout a given industry or profession or if those in attendance represent a range of persons interested in a given matter. For employees subject to a leave system, attendance at the event shall be on the employee's own time or, if authorized by the employee's agency, on excused absence pursuant to applicable guidelines for granting such absence, or otherwise without charge to the employee's leave account.

Under this gift acceptance exception, individual written determinations of agency interest must be made by the agency designee when the sponsor (or a majority of the sponsor's members) has an interest that could be substantially affected by the performance or nonperformance of the employee's official duties.

As you indicated in your attachments, there may be occasions when the gift acceptance exception for widely attended gatherings is applicable to free attendance by DoD employees at gatherings that include sporting activities. However, use of this exception is never appropriate for free attendance at sporting events when there is no opportunity to gather with all the participants representing a wide range of persons



interested in a given matter. For example, a DoD employee could not use this exception to accept free attendance at a golf tournament hosted by a defense contractor when the employee would only have the opportunity to converse with the other three members of the foursome. Similarly, a DoD employee may not use this exception to accept free attendance to sit in the stands with the donor at a Super Bowl game or tennis match.

The widely attended gathering exception may be used when there is a gathering, usually of twenty people or more, comprised of a range of persons interested in a given matter, when the proper determinations have been made. For example, a DoD employee with official interest in the installations surrounding a community may use this exception to accept free attendance to a dinner party hosted by a local civic association if the other invitees have similar interests. Specifically, representatives of the Office of Government Ethics have agreed that if the Governor of Maryland invited the Secretary of Defense to the Preakness (horse races) along with other officials who are interested in the well being of Maryland military installations, the Secretary may accept free attendance at the event when the invitees meet in the confines of the Governor's tent where they are afforded the opportunity to gather and converse immediately before, during, or immediately after the sporting event. The critical factor is whether there is an opportunity to exchange ideas in a gathering that is associated with the sporting activity.

Many times, free attendance at events may be accepted under other gift acceptance exceptions even when the widely attended gathering exception is not appropriate. For example, there are specific exceptions for when an invitation comes from a personal friend or relative or when attendance costs up to \$20.

With regard to the Greater San Antonio Chamber of Commerce Golf Tournament, the information you provided indicates that the event would meet the criteria of either one of the following gift acceptance exceptions:

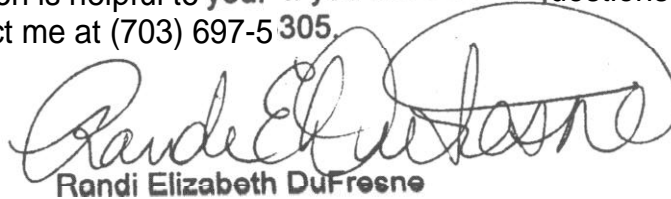
- (a) 5 CFR 2635204(h) Social **invitations** from persons other than prohibited sources. An employee may accept food, refreshments and entertainment, not including travel or lodgings, at a social event attended by several persons where:
 - (1) The invitation is from a person who is not a prohibited source; and
 - (2) No fee is charged to any person in attendance.
- (b) Joint Ethics Regulation, 5500.7-R, **section** 2-202.a. Events Sponsored by States, Local Governments or **Civic** Organizations. A DoD employee may accept a sponsor's unsolicited gift of free

attendance for himself and an accompanying spouse at an event sponsored by a State or local government or by a civic organization exempt from taxation under 26 USC 501(c)(4) . . ., when:

- (1) The Agency Designee has determined that the community relations interest of the Agency will be served by the DoD employee's attendance;
- (2) The cost of the DoD employee's and the spouse's attendance is provided by the sponsor in accordance with 5 CFR 2635.204(g)(5) . . .; and
- (3) The gift of free attendance meets the definition in 5 CFR 2635.204(g)(4)

I recommend that you rely upon one of the two exceptions described above for the events taking place in San Antonio. Similar events should be analyzed against the guidance set out in this memorandum.

I hope this information is helpful to you. If you have other questions regarding this matter, you may contact me at (703) 697-5305.

A handwritten signature in cursive script, reading "Randi Elizabeth DuFresne", is written over a horizontal line.

Randi Elizabeth DuFresne
Senior Attorney
Standards of Conduct Office